STATE OF MICHIGAN

COURT OF APPEALS

BLEC MANUFACTURING & SERVICE COMPANY, Plaintiff-Appellant,	UNPUBLISHED January 26, 2001
v	No. 217405 Wayne Circuit Court
COMERICA BANK, Defendant-Appellee.	LC No. 98-817146-CK

Before: Markey, P.J., and Whitbeck and J. L. Martlew*, JJ.

PER CURIAM.

Plaintiff appeals by right from the trial court's order denying its motion for summary disposition, granting summary disposition in favor of defendant, and dismissing the case. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff filed a verified complaint alleging that defendant removed funds from its account for the stated reason that plaintiff was indebted to defendant. Plaintiff sought an accounting and a return of the funds if a sufficient accounting could not be provided. Defendant admitted taking an offset, and in an affirmative defense contended that the offset was permitted under the terms of promissory notes plaintiff executed.

Plaintiff moved for summary disposition pursuant to MCR 2.116(C)(8), (9) and (10), asserting that it had executed a promissory note with the understanding that it would be canceled if no debt was owed. Plaintiff claimed that notwithstanding its execution of the note, it was entitled to a return of the funds withdrawn from its account because defendant could not demonstrate the existence of consideration for the promise to pay, i.e., disbursement of funds pursuant to the note. Defendant responded that the parole evidence rule barred plaintiff's reliance on an alleged oral representation that changed the terms of the original note, and that plaintiff's claim that the promise to cancel the note was barred by the statute of limitations, MCL 600.5807; MSA 27A.5807, and the statute of frauds because the alleged promise to cancel the note was not in writing, MCL 566.132(2); MSA 26.922(2). The trial court denied plaintiff's

* Circuit judge, sitting on the Court of Appeals by assignment.

motion for summary disposition, granted summary disposition in favor of defendant pursuant to MCR 2.116(I)(2), and dismissed the case.

Plaintiff argues that the trial court erred by denying its motion for summary disposition, granting summary disposition in favor of defendant, and dismissing the case. We disagree. We review a trial court's decision on a motion for summary disposition de novo. *Harrison v Olde Financial Corp*, 225 Mich App 601, 605; 572 NW2d 679 (1997). The undisputed evidence established that plaintiff executed promissory notes every year between 1988 and 1991, and each note allowed defendant (or defendant's predecessor) an offset. Each new note constituted a promise to pay preexisting debt. By taking each new note, defendant agreed to forego suing plaintiff to collect on the previous note. Such an agreement constituted sufficient consideration for plaintiff's promise to pay. *Enzymes of America, Inc v Deloitte, Haskins & Sells*, 207 Mich App 28, 36; 523 NW2d 810 (1994), rev'd on other grounds 450 Mich 889; 539 NW2d 513 (1995). Furthermore, contrary to plaintiff's assertion, the parol evidence rule, the statute of limitations, and the statute of frauds were not affirmative defenses, and thus were not required to be raised in defendant's first responsive pleading. MCR 2.111(F)(3)(a). Plaintiff's complaint did not allege the existence of the purported oral agreement. The finding that defendant's agreement to forego suing on each note as it came due constituted adequate consideration was proper as was the trial court's decision granting summary disposition in favor of defendant.

We affirm.

/s/ Jane E. Markey
/s/ William C. Whitbeck
/s/ Jeffrey L. Martlew